UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALEC TABAK, Plaintiff, - against - MUSINART LLC, Defendant.	Docket No. 17-cv-01732 JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Alec Tabak ("Tabak" or "Plaintiff"), by and through his undersigned counsel, as and for his Complaint against Defendant Musinart LLC ("Musinart" or "Defendant") hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant's unauthorized reproduction and public display of a copyrighted photograph of rapper Roland Collins, a/k/a "Troy Ave," owned and registered by Tabak, a New York City-based photojournalist. Accordingly, Tabak seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq*.

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq*. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in Brooklyn, New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Tabak is a professional photojournalist in the business of licensing his photographs to online, print, and television media outlets for a fee, having a usual place of business at 32 Leroy Street, Apt. 10, New York, New York 10014. Tabak's photographs have appeared in many publications around the United States.

6. Upon information and belief, Musinart is a limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 43 Montgomery Place, Brooklyn, New York 11215. At all times material hereto, Musinart has owned and operated a website at the URL: www.respect-mag.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On July 11, 2016, Tabak photographed rapper Troy Avenue being carried out of Manhattan Criminal Court by two men (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Tabak then licensed the Photograph to the New York Daily News (the "Daily News"). On July 11, 2016, the Daily News ran an article that featured the Photograph on its web edition entitled, *Troy Ave freed on bail as authorities investigate fatal shooting*. See http://www.nydailynews.com/new-york/nyc-crime/troy-ave-free-bail-authorities-investigate-fatal-shooting-article-1.2707296. Tabak's name was featured in a gutter credit identifying him as

the photographer of the Photograph. A true and correct copy of the Photograph in the article is attached hereto as Exhibit B.

9. Tabak is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA0002013887.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about July 11, 2016, Musinart ran an article on the Website entitled *Troy Ave Has Been Released on Bail Bond*. See http://respect-mag.com/2016/07/troy-ave-released-bail-bond/. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit C.

12. Musinart did not license the Photograph from Plaintiff for its article, nor did Musinart have Plaintiff's permission or consent to publish the Photograph on its Website.

13. Upon information and belief, Musinart removed Tabak's gutter credit and did not attribute the Photograph to anyone.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST MUSINART)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Musinart infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Musinart is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the aforementioned acts of infringement by Musinart have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

18. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, as a result of Defendant's willful infringement of the Photograph, Plaintiff is entitled to recover statutory damages of up to $150,000 per work infringed pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to recover his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

21. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST MUSINART
(17 U.S.C. § 1202)

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-21 above.

23. When the Photograph was published in an article in the Daily News, the article contained copyright management information under 17 U.S.C. § 1202(b).

24. Upon information and belief, in its article on the Website, Musinart intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

25. The conduct of Musinart violates 17 U.S.C. § 1202(b).

26. Upon information and belief, Musinart's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Musinart intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Musinart also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal its infringement of Plaintiff's copyrights in the Photograph.

28. As a result of the wrongful conduct of Musinart as alleged herein, Plaintiff is entitled to recover from Musinart the damages that he sustained and will sustain, including his attorney's fees and costs, and any gains, profits and advantages obtained by Musinart because of its violations of 17 U.S.C. §1202.

29. Alternatively, Plaintiff may elect to recover from Musinart statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least $2,500 and up to $25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Musinart be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;

2. The Defendant Musinart be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202;

3. That, with regard to the First Claim for Relief, Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to $150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least $2,500 and up to $ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);

5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;

7. That Plaintiff be awarded pre-judgment interest; and

8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: March 28, 2017
Valley Stream, New York

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